provisions of s 254 or s 255 of the National Land Code 1965. In this case we observed that the respondent had by a letter dated 3 March 1987, through its solicitors Shook Lin & Bok, demanded of the appellant within seven days from the date thereof payment of the whole outstanding balances on the appellant's first and second charges. The appellant received the said letter but failed and or neglected to pay the sums due, and accruing interest thereon or in part thereof within the periods specified and had thereby committed a breach of one of the terms of the said charges. The said breach committed by the appellant of the term of the said charges having continued for a period of more than seven days, the respondent through its solicitors then caused a statutory notice of default in Form 16D of the National Land Code 1965, dated 21 March 1987, to be issued requiring the appellant to remedy the said breach within a further period of seven days from the date of receipt of service thereof, failing which an order for sale would be applied for. The said notice was received by the appellant on or about 21 March 1987, but it failed and or neglected to remedy the said breach. It should be mentioned here that by s 8.01 of the annexure to the said charges it has been provided that:

> A demand for repayment of the moneys hereby secured or the balance thereof together with interest thereon and any other moneys due as aforesaid under any of the provisions of s 8.01 hereof may be made by a notice demanding payment within seven (7) days from the date of notice. Service of such notice shall be effected in the same manner as provided in s 12.01 hereof.

On the evidence adduced, the respondent had on its application satisfied the court that the prior requirements of the law for an order for sale by the court have been complied with, and that default has been made by the appellant. The learned judge was therefore correct in making the said order that the lands in question be sold by public auction under s 256 of the National Land Code 1965 to satisfy the sums due to the respondent.

In this context we would consider it relevant to refer to the following passages in the judgment of the former FMS Court of Appeal concerning the exercise by a chargee of his remedy under the provisions of the former Land Code 1926, where default in payment has been made by a chargor, delivered by Thorne Ag CJ (as he then was) in *Chettiappah Chetty* v *Raja Abdul Rashid*[1] at p 347 in which his Lordship said as follows:

> By s 149 of the Land Code, it is provided that, after establishing the default on the part of the chargor in accordance with the provisions of the earlier sections of the Code, it shall be lawful for the chargee by summons to call the proprietor of the charged land to show cause why the land should not be sold by public auction under the direction of the court.
>
> It is to be noted that the legislature in its wisdom has provided that the chargee may not exercise his rights against the charged lands without first establishing that a default had been made by the chargor, and calling upon the chargor by a summons to show cause why the charged premises should not be sold. That in effect is an application by the chargee for liberty to exercise his rights as chargor against the charged premises. All that the court has to do on such an application is to satisfy itself that the requirements of the law have been complied with, and that default has been made by the chargor.

In this case, having satisfied ourselves that the requirements of the law under the provisions of the National Land Code 1965 have been complied with and that default has been made by the chargor, we therefore did not consider it necessary to call upon Miss Yoong, counsel for the respondent, to reply and dismissed the appeal with costs and ordered that the deposit be paid to the respondent on account of taxed costs.

Appeal dismissed.

Solicitors: *K Chandra & Co*; *Shook Lin & Bok.*

Reported by *Prof Ahmad Ibrahim*

Minister of Labour, Malaysia v Sanjiv Oberoi & Anor

SUPREME COURT (KUALA LUMPUR) — CIVIL APPEAL NO 385 OF 1987
ABDUL HAMID LP, MOHAMED YUSOFF AND AJAIB SINGH SCJJ
29 AUGUST 1989

Administrative Law — Certiorari — Decision of Minister of Labour not to refer representations to Industrial Court — Whether Minister required to give reasons — Industrial Relations Act 1967, s 20(3)

Labour Law — Decision of Minister of Labour not to refer representations to Industrial Court — Whether Minister required to give reasons — Industrial Relations Act 1967, s 20(3)

The first respondent was employed by the second respondent, Genting Bhd, as executive food and beverage manager on a two-year contract with effect from 1 March 1985. On 23 June 1986 the second respondent terminated the contract with two months' salary in lieu of notice. The first respondent made representations to the Director-General for Industrial Relations for reinstatement in his former employment. Steps taken to effect a settlement failed. The Director-General referred the matter to the Minister of Labour. The Minister, after considering the report of the Director-General and in the exercise of his discretion under s 20(3) of the Industrial Relations Act 1967, decided not to refer the representations to the Industrial Court. The first respondent applied for certiorari, and the learned judge who heard the application held that the Minister in exercising his discretion must state his reasons on the facts of each particular case and he directed the Minister to file a further affidavit stating his reasons why the matter was not referred to the Industrial Court. The Minister of Labour appealed.

Held, allowing the appeal:

(1) The order for further affidavit should only be given in

accordance with and under the circumstances permitted under the Rules of the High Court 1980. In this case, the learned judge's order amounted to a direction about evidence which cannot be given unless all the litigants desire such direction to be made.

(2) The Minister of Labour is not required to give any reasons when he exercises his direction under s 20(3) of the Industrial Relations Act 1967. The learned judge's decision that the appellant give reasons for not referring the representations to the Industrial Court was not justified.

Case referred to
1 *Tay Bok Choon* v *Tahansan Sdn Bhd* [1987] 1 MLJ 433 (folld)

Legislation referred to
Industrial Relations Act 1967 s 20

Appeal from: Originating Motion No R8-A32-3-1987 (High Court, Kuala Lumpur)

Lim Heng Seng (Senior Federal Counsel) for the appellant.
Mohan Ghandi for the first respondent.
VT Nathan (*Peh Lee Kheng* with him) for the second respondent.

Cur Adv Vult

Abdul Hamid LP (delivering the judgment of the court): The first respondent Sanjiv Oberoi was employed by Genting Bhd as executive food and beverage manager at Genting Highlands Resort with effect from 1 March 1985 on a two-year contract in writing. On 21 June 1986 Genting Bhd terminated the contract with effect from 23 June 1986 with two months' salary in lieu of notice. This was done by Genting Bhd pursuant to cl 14(3) of the written contract which states that 'either party shall be entitled, without assigning any reasons thereto, to terminate this contract by giving to the other not less than two (2) months' written notice of termination or by paying to the other the equivalent of two (2) months' salary in lieu of notice'.

By letter dated 2 July 1986 Sanjiv Oberoi made representations to the Director-General for Industrial Relations under s 20(1) of the Industrial Relations Act 1967 ('the Act') for reinstatement in his former employment. Steps taken by the Director-General to effect a settlement between the parties failed and the Director-General informed the Minister of Labour accordingly on 7 October 1986 under s 20(2) of the Act that there was no likelihood of the representations being settled.

The Minister of Labour considered the report of the Director-General and in the exercise of his discretion under s 20(3) of the Act he did not deem it fit to refer the representations to the Industrial Court. Sanjiv Oberoi was informed accordingly by letter dated 25 November 1986.

Sanjiv Oberoi then obtained leave to apply for an order of certiorari to have the decision of the Minister dated 25 November 1986 quashed on grounds that the Minister of Labour, in making his decision under s 20(3) of the Act, acted in excess or without jurisdiction or abuse of his discretion in that he made the said decision without any lawful, valid or reasonable grounds.

The originating motion for certiorari came up for hearing before the learned judge on 12 August 1987. After hearing submissions by the parties, the learned judge held that the Minister in exercising his discretion must state his reasons on the facts of each particular case. He further added:

> He continues to have discretion and it is not open to the court to disagree with his reasons unless the reasons given by him are unreasonable. As there is a misconception of the law, I direct the Minister to file a further affidavit by stating his reasons why the matter was not referred to the Industrial Court on or before 30 August 1987.

He then adjourned further hearing of the originating motion to a date to be fixed. The Minister of Labour appealed against this ruling.

We have considered the submissions advanced by counsel for the parties and have perused the appeal record. And we have unanimously decided to allow the appeal.

As for the learned judge's order to file further affidavit, we are of the view that the order for further affidavit should only be given in accordance with and under the circumstances permitted under the Rules of the High Court 1980. The learned judge's order amounted to a direction about evidence. The authority on this point is clear in that 'the court cannot give a direction about evidence unless all the litigants desire such direction to be made'. (See *Tay Bok Choon* v *Tahansan Sdn Bhd*[1] at p 436 per Lord Templeman.)

As for this appeal, we are of the view that on the evidence in this case the Minister of Labour had not acted unreasonably. There is no evidence that the Minister had acted in bad faith or that he was biased against Sanjiv Oberoi. The Minister of Labour is not required to give any reasons when he exercises his discretion under s 20(3) of the Industrial Relations Act 1967. We hold therefore that the learned trial judge's direction that the appellant give reasons for not referring Sanjiv Oberoi's representations to the Industrial Court was not justified and we accordingly allow the appeal with costs.

Appeal allowed.

Solicitors: *Lobo & Associates; Shearn Delamore & Co.*

Reported by *Prof Ahmad Ibrahim*